

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Metals Recycling L.L.C

**FILE NO.: WP 13-83
X- Ref RIPDES RI0023485**

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under the DEM's jurisdiction.

B. Facts

- (1) The property is located at 89 Celia Street in the town of Johnston, Rhode Island (the “Property”). The Property includes a facility that is engaged in processing, separating, sorting and stockpiling scrap metal and associated by-products (the “Facility”).
- (2) The Respondent was issued Rhode Island Pollutant Discharge Elimination System (“RIPDES”) Permit No. RI0023485 (the “Permit”) on 17 June 2009 that became effective on 1 July 2009. The Permit authorizes the Respondent to discharge stormwater from the Facility through outfall number 001A (the “Outfall”) to an unnamed tributary flowing into the Woonasquatucket River.
- (3) The Permit requires the Respondent to:
 - (a) Comply with all of the terms and conditions of its Storm Water Pollution Prevention Plan (“SWPPP”);
 - (b) Take all reasonable steps to minimize or prevent any discharge in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment;
 - (c) At all times maintain in good working order and operate as efficiently as possible all systems of treatment and control used to achieve compliance with the permit;
 - (d) Operate back up or auxiliary facilities or similar systems when necessary to achieve compliance with the permit;
 - (e) Collect water samples from the Outfall each quarter of the calendar year and analyze the samples for, among other pollutants, total iron and total zinc;
 - (f) Compare the analytical results to benchmark concentrations in the permit (the “Benchmark Concentrations”) that are used to evaluate the overall effectiveness of the SWPPP;

- (g) Submit a Discharge Monitoring Report (“DMR”) each quarter to the DEM and include in the DMR a report that compares the analytical results to the Benchmark Concentrations; and
 - (h) Give advance notice to the DEM of any planned changes in the Facility or activity which may result in noncompliance with the permit.
- (4) On 13 July 2012 the Respondent submitted the SWPPP to the DEM. The SWPPP requires the Respondent to:
- (a) Treat all stormwater generated at the Facility from the first inch of rainfall, which is equal to 350,000 gallons; and
 - (b) Treat the stormwater by a system that includes 4 pumps (the “Stormwater Pumps”), an aeration/equalization tank, sediment forebay and bioretention swale (the “Stormwater Treatment System”).
- (5) The Stormwater Treatment System became operational in July 2012.
- (6) On 15 July 2013 the DEM received a DMR and cover letter dated 12 July 2013 that was signed by GZA GeoEnvironmental, Inc. (“GZA”) on behalf of the Respondent (the “July 15TH Letter”). GZA stated the following:
- (a) The Stormwater Treatment System was inspected on a weekly basis and found to be in compliance, with the exception of stormwater pump fault;
 - (b) The Stormwater Pumps are currently being reviewed and repaired by the manufacturer;
 - (c) On 28 June 2013 water samples were collected during a rain event from the Outfall; and
 - (d) The results of the 28 June 2013 sampling revealed levels of Total Iron of 4.29 mg/L and Total Zinc of .502 mg/L.
- (7) On 20 September 2013 the DEM received a letter from Ms. Fitzpatrick (the “September 20TH Letter”) in response to the DEM’s request for further information concerning the removal of the Stormwater Pumps. Ms. Fitzpatrick stated the following:
- (a) Between October 2012 and May 2013 the pumps experienced intermittent interruptions due to electrical faults;
 - (b) In the fall of 2012 the Respondent retained an engineering consultant to investigate the cause of the electrical faults;
 - (c) The consultant inspected the pumps in the fall of 2012 and the winter of 2012/2013 but could not identify the cause of the electrical faults;
 - (d) In May 2013 complete failure of all the pumps occurred;
 - (e) On 13 May 2013 and 3 June 2013 the consultant inspected the pumps but could not identify the cause of the failure;

- (f) On 24 June 2013 an inspection of the pumps by a second engineering consultant revealed that the manufacturer-sealed terminals were inoperable;
 - (g) On 8 July 2013 all the pumps were removed and sent to the manufacturer for repair; and
 - (h) On 4 September 2013 and 5 September 2013 all the repaired pumps were installed at the Facility.
- (8) The Respondent failed to install back up pumps during the period when the Stormwater Pumps were inoperable and during the period when the Stormwater Pumps were inoperable the Stormwater Treatment System was inoperable.
- (9) The DEM reviewed rainfall data during the period when the Stormwater Treatment System was inoperable, and calculated the stormwater volume that was discharged from the Facility during the period when the Stormwater Treatment System was inoperable (the “Untreated Stormwater”) for each Rainfall Date. The date of rainfall (the “Rainfall Date”), the rainfall amount over a 24 hour period (the “Rainfall Amount”), and the Untreated Stormwater volume are shown below.

Rainfall Date	Rainfall Amount (inches)	Untreated Stormwater Volume (gallons)
19 May 2013	0.18	63,000
23 May 2013	0.24	84,000
29 May 2013	0.70	245,000
3 June 2013	0.78	273,000
7 June 2013	3.23	350,000
11 June 2013	0.90	315,000
18 June 2013	0.31	108,500
28 June 2013	0.47	164,500
11 July 2013	0.43	150,500
20 July 2013	0.11	38,500
25 July 2013	0.72	252,000
2 August 2013	0.20	70,000
9 August 2013	1.74	350,000
22 August 2013	0.63	220,500
26 August 2013	0.32	112,000
1 September 2013	0.67	234,500

- (10) The DEM reviewed the DMRs for calendar year 2012. The results for Total Iron and Total Zinc are shown below and are in mg/L.

Pollutant	Benchmark Concentration	Date Sample Collected			
		3/28/12	6/13/12	9/19/12	11/4/12
Total Iron	1.0	4.38	3.76	0.81	0.25
Total Zinc	0.117	0.270	0.268	0.064	<.050

- (11) The samples collected on 28 March 2012 and 13 June 2012 were prior to the Stormwater Treatment System becoming operational and the samples collected on 19 September 2012 and 4 November 2012 were after the Stormwater Treatment System became operational.
- (12) The DEM believes that the Untreated Stormwater had levels of Total Iron and Total Zinc that is comparable to the results reported in the DMRs for 28 March 2012 and 13 June 2012, which are well above the Benchmark Concentrations, as demonstrated by the 28 June 2013 sampling referenced in Paragraph 6(d), above.
- (13) The Respondent failed to comply with its SWPPP and the Permit by discharging the Untreated Stormwater through the Outfall.
- (14) The Respondent failed to take all reasonable steps to minimize or prevent any discharge in violation of the Permit which has a reasonable likelihood of adversely affecting human health or the environment by installing temporary pumps during the period when the Stormwater Pumps were inoperable.
- (15) The Respondent failed to at all times maintain in good working order and operate as efficiently as possible all systems of treatment and control used to achieve compliance with the Permit by installing temporary pumps during the period when the Stormwater Pumps were inoperable.
- (16) The Respondent failed to operate back up or auxiliary facilities or similar systems when necessary to achieve compliance with the Permit.
- (17) The Respondent failed to give advance notice to the DEM of the inoperable Stormwater Treatment System. The July 15TH Letter failed to mention that the Stormwater Pumps and the Stormwater Treatment System were inoperable.

C. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **Rhode Island's Water Pollution Act, Section 46-12-5(b)** – requiring the discharge of any pollutant into waters of the State comply with the terms and conditions of a permit and applicable regulations.
- (2) **DEM's Water Quality Regulations**
 - (a) **Rule 9(A)** – prohibiting the discharge of pollutants into any waters of the State or any activity alone or in combination which the Director determines will likely result in the violation of any State water quality criterion or interfere with one or more of the existing or designated uses assigned to the receiving waters.
 - (b) **Rule 11(B)** – requiring the discharge of pollutants into the waters of the State comply with the terms and conditions of a permit issued by DEM.
 - (c) **Rule 16(A)** – mandating compliance with all terms, conditions, management practices and operation and maintenance requirements set forth in a permit.
- (3) **DEM's Regulations for the Rhode Island Pollutant Discharge Elimination System**
 - (a) **Rule 14.02(a)** – requiring the permittee to comply with all conditions of the permit.
 - (b) **Rule 14.05** – requiring the permittee to take all reasonable steps to minimize or prevent a discharge in violation of the permit.
 - (c) **Rule 14.06** – requiring the permittee to maintain in good working order and operate as efficiently as possible all treatment works to achieve compliance with the permit.
 - (d) **Rule 14.17** – requiring the permittee shall give reasonable advance notice to the DEM of any planned changes in the Facility or activity which may result in noncompliance with the permit.

D. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to:

- (1) **Within 30 days of receipt of this Notice of Violation (“NOV”)**, revise the Stormwater Treatment System Operation and Maintenance Plan dated July 2012 to address the installation of temporary pumps in the event any of the Stormwater Pumps are inoperable or must be removed for repair or maintenance (the “Revised

O&M Plan”) and submit the Revised O&M Plan to the DEM.

- (2) The Revised O&M Plan shall be subject to the DEM’s review and approval. Upon review, the DEM shall provide written notification to the Respondent either granting formal approval or stating the deficiencies therein. Within 14 days (unless a longer time is specified) of receiving a notification of deficiencies, the Respondent shall submit to the DEM a modified plan or additional information necessary to correct the deficiencies.
- (3) Upon approval of the Revised O&M Plan by the DEM, the Respondent shall comply with the plan at all times.

E. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

One Hundred Thousand Dollars (\$100,000.00)

- (2) The proposed administrative penalty is calculated pursuant to the DEM’s *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within 30 days of your receipt of this NOV. Payment shall be in the form of a certified check, cashier’s check or money order made payable to the “General Treasury - Water & Air Protection Program Account” and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against the Respondent in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

F. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through E above. All requests for hearing MUST:
 - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
 - (b) Be **RECEIVED** by the DEM’s Administrative Adjudication Division, at the following address, within 20 days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
Office of Administrative Adjudication
One Capitol Hill, Second Floor
Providence, RI 02903

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters*.
- (2) A copy of each request for hearing must also be forwarded to:
- Susan Forcier, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH Floor
Providence, RI 02908-5767
- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before the DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).
- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of this NOV is being forwarded to the town of Johnston wherein the Property is located to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Section 46-12-9(c), as amended.
- (7) This NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Susan Forcier at the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Patrick Hogan of the DEM Office of Compliance and Inspection at (401) 222-1360 extension 7119.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section F above.

FOR THE DIRECTOR

David E. Chopy, Chief
DEM Office of Compliance and Inspection

Date: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

Metals Recycling L.L.C.
c/o CT Corporation System, Registered Agent
450 Veterans Memorial Parkway, Suite 7A
East Providence, RI 02914

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, Water Pollution
 File Nos.: WP13-83 x-ref RIPDES RI0023485
 Respondent: Metals Recycling L.L.C.

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
C(1), C(2) and C(3)(a), (b) & (c) – Failure to comply with SWPPP and Permit – May, July, August and September 2013	Type I (\$25,000 Max. Penalty)*	Major	\$12,500	4 months	\$50,000.00
C(1), C(2) and C(3)(a), (b) & (c) – Failure to comply with SWPPP and Permit – June 2013	Type I (\$25,000 Max. Penalty)*	Major	\$25,000	1 month	\$25,000.00
C(3)(d) – Failure to report noncompliance	Type I (\$25,000 Max. Penalty)*	Major	\$25,000	1 violation	\$25,000.00
SUB-TOTAL					\$100,000.00

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

A review of the record in this matter has revealed that the Respondent has either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.

COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that the DEM has not incurred any additional or extraordinary costs during the investigation, enforcement and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$100,000.00

PENALTY MATRIX WORKSHEET

CITATION: Failure to comply with SWPPP and Permit

VIOLATION NO.: C(1), C(2), and C(3)(a), (b) and (c) – May, July, August and September 2013

TYPE		
X TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	_____ TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	_____ TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

DEVIATION FROM THE STANDARD
 THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10(a)(2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent failed to comply with its SWPPP and its permit by discharging stormwater from the facility to the Woonasquatucket River without prior treatment through the aeration/equalization tank, sediment forebay, and bioretention swale. Proper treatment of stormwater is a major objective of the DEM's RIPDES Regulations and DEM's Water Quality Regulations and is of major importance to the regulatory program.
- (B) **Environmental conditions:** The Woonasquatucket River in the area of the discharge from the facility is classified as Class B1 and Class B1{a} waters. These waters are designated for fish and wildlife habitat and primary and secondary contact recreational activities. The River is currently listed as impaired for these goals. Among the reasons for the impairment are elevated levels of Copper, Lead and Zinc in the River.
- (C) **Amount of the pollutant:** 392,000 gallons (May 2013); 441,000 gallons (July 2013); 640,500 gallons (August 2013); and 234,500 gallons (September 2013)
- (D) **Toxicity or nature of the pollutant:** Sampling data provided to the DEM as part of the permit application and sampling data provided to the DEM in the DMRs for 28 March 2012 and 13 June 2012 (prior to the stormwater treatment system becoming operational) show the following pollutants in the stormwater generated at the facility: Biochemical Oxygen Demand; Chemical Oxygen Demand; Total Suspended Solids; Oil and Grease; Copper; Lead; Aluminum; Iron; and Zinc. Copper, Lead, Aluminum, Iron and Zinc are toxic pollutants and can cause lethal or sublethal adverse effects to aquatic life. The DMRs for 28 March 2012 and 13 June 2012 show the following: Copper of 0.023 mg/L and 0.027 mg/L, respectively; Lead of 0.046 mg/L and 0.024 mg/L, respectively; Aluminum of 0.844 mg/L and 0.439 mg/L, respectively; Iron of 4.38 mg/L and 3.76 mg/L, respectively; and Zinc of 0.270 mg/L and 0.268 mg/L, respectively. The DMRs for 19 September 2012 and 14 November 2012 (after the stormwater treatment system became operational) show the following: Copper and Lead of 0.0 mg/L for both quarters; Aluminum of 0.482 mg/L and 0.127, respectively; Iron of 0.81 mg/L and 0.25 mg/L, respectively; and Zinc of 0.064 mg/L and 0.0 mg/L, respectively. The level of Aluminum for 28 March 2012 exceeds the benchmark concentration of 0.75 mg/L in the permit. The level of Iron for 28 March 2012 and 13 June 2012 is about 4 times higher than the benchmark concentration of 1.0 mg/L in the permit. The level of Zinc for 28 March 2012 and 13 June 2012 is about 2 times higher than the benchmark concentration of 0.117 mg/L in the permit.

(continued)

- (E) **Duration of the violation:** 4 months. Stormwater was discharged from the facility without proper treatment on 11 days in May 2013, July 2013, August 2013 and September 2013.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.
- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent did not take reasonable and appropriate steps to prevent or mitigate the violation. The Respondent removed all the stormwater pumps that transfer stormwater for treatment to the aeration/equalization tank, sediment forebay and bioretention swale and failed to install any temporary pumps during the period the stormwater pumps were out of service. The Respondent allowed stormwater from the facility to discharge to the waters of the State without any treatment through the aeration/equalization tank, sediment forebay or bioretention swale, which is required by the SWPPP.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the facility operations and the violations. The Respondent could have installed temporary pumps during the period when the stormwater pumps were inoperable, but chose not to do so. The Respondent was well aware that failure to install temporary pumps meant that stormwater from the facility would discharge into the waters of the State without treatment through the aeration/equalization tank, sediment forebay or bioretention swale, which is required by the SWPPP.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000 \$12,500	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to comply with SWPPP and Permit
 VIOLATION NO.: C(1), C(2), and C(3)(a), (b) and (c) – June 2013

TYPE		
X TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>TYPE II</u> <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u>TYPE III</u> <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.

DEVIATION FROM THE STANDARD
 THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10(a)(2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent failed to comply with its SWPPP and its permit by discharging stormwater from the facility to the Woonasquatucket River without prior treatment through the aeration/equalization tank, sediment forebay, and bioretention swale. Proper treatment of stormwater is a major objective of the DEM's RIPDES Regulations DEM's Water Quality Regulations and is of major importance to the regulatory program.
- (B) **Environmental conditions:** The Woonasquatucket River in the area of the discharge from the facility is classified as Class B1 and Class B1{a} waters. These waters are designated for fish and wildlife habitat and primary and secondary contact recreational activities. The River is currently listed as impaired for these goals. Among the reasons for the impairment are elevated levels of Copper, Lead and Zinc in the River.
- (C) **Amount of the pollutant:** 1,210,000 gallons (June 2013)
- (D) **Toxicity or nature of the pollutant:** Sampling data provided to the DEM as part of the permit application and sampling data provided to the DEM in the DMRs for 28 March 2012 and 13 June 2012 (prior to the stormwater treatment system becoming operational) show the following pollutants in the stormwater generated at the facility: Biochemical Oxygen Demand; Chemical Oxygen Demand; Total Suspended Solids; Oil and Grease; Copper; Lead; Aluminum; Iron; and Zinc. Copper, Lead, Aluminum, Iron and Zinc are toxic pollutants and can cause lethal or sublethal adverse effects to aquatic life. The DMRs for 28 March 2012 and 13 June 2012 show the following: Copper of 0.023 mg/L and 0.027 mg/L, respectively; Lead of 0.046 mg/L and 0.024 mg/L, respectively; Aluminum of 0.844 mg/L and 0.439 mg/L, respectively; Iron of 4.38 mg/L and 3.76 mg/L, respectively; and Zinc of 0.270 mg/L and 0.268 mg/L, respectively. The DMRs for 19 September 2012 and 14 November 2012 (after the stormwater treatment system became operational) show the following: Copper and Lead of 0.0 mg/L for both quarters; Aluminum of 0.482 mg/L and 0.127, respectively; Iron of 0.81 mg/L and 0.25 mg/L, respectively; and Zinc of 0.064 mg/L and 0.0 mg/L, respectively. The level of Aluminum for 28 March 2012 exceeds the benchmark concentration of 0.75 mg/L in the permit. The level of Iron for 28 March 2012 and 13 June 2012 is about 4 times higher than the benchmark concentration of 1.0 mg/L in the permit. The level of Zinc for 28 March 2012 and 13 June 2012 is about 2 times higher than the benchmark concentration of 0.117 mg/L in the permit. Sampling data provided to the DEM in the DMR for 15 July 2013 (when the storm water treatment system was inoperable) shows the following: Iron of 4.29 mg/L and Zinc of 0.502 mg/L. The levels of Iron and Zinc are about 4 times higher than the benchmark concentration of 1.0 mg/L in the permit and 0.117 mg/L in the permit, respectively.

(continued)

- (E) **Duration of the violation:** 1 month. Stormwater was discharged from the facility without proper treatment on 5 days in June 2013.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.
- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent did not take reasonable and appropriate steps to prevent or mitigate the violation. The Respondent removed all the stormwater pumps that transfer stormwater for treatment to the aeration/equalization tank, sediment forebay and bioretention swale and failed to install any temporary pumps during the period the stormwater pumps were out of service. The Respondent allowed stormwater from the facility to discharge to the waters of the State without any treatment through the aeration/equalization tank, sediment forebay or bioretention swale, which is required by the SWPPP.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the facility operations and the violations. The Respondent could have installed temporary pumps during the period when the stormwater pumps were inoperable, but chose not to do so. The Respondent was well aware that failure to install temporary pumps meant that stormwater from the facility would discharge into the waters of the State without treatment through the aeration/equalization tank, sediment forebay or bioretention swale, which is required by the SWPPP.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000 \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Failure to report noncompliance

VIOLATION NO.: C(3)(d)

TYPE		
<p><u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10(a)(2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondent failed to give advance notice to the DEM of the inoperable stormwater pumps and stormwater treatment system as required by its permit. Proper notification of activities that may result in noncompliance with the permit is a major objective of the DEM's RIPDES Regulations and is of major importance to the regulatory program.</p> <p>(B) Environmental conditions: Considered, but not utilized for this calculation.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Considered, but not utilized for this calculation.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p> <p style="text-align: right;">(continued)</p>		

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent did not take reasonable and appropriate steps to prevent the violation. The DMR report dated 12 July 2013 states that the stormwater pumps are being reviewed and repaired by the manufacturer. Nowhere in the report does it state that the pumps were removed from service and that the stormwater treatment system was inoperable. In fact, the report includes misleading information that led the DEM to conclude that the stormwater treatment system was fully operable. It states that "All parameter concentrations were below their respective RIPDES Permit Benchmark Concentrations (BCs) for the grab stormwater sample, with the exception of iron and zinc...most parameter concentrations in the sample collected on June 28, 2013 are similar to the previous quarter and below historic levels which is expected, as this is the fourth quarter where the stormwater treatment system upgrade was operational. Iron and zinc concentrations were elevated this quarter and Metals Recycling will investigate the potential problems and address in the next quarter". The report further states that "Metals Recycling will continue to monitor and maintain the stormwater treatment and conveyance system". Not only did the Respondent fail to give the DEM advance notice of the inoperable system, it misled the DEM in its DMR report that was submitted on 15 July 2013 (2 months after the system became inoperable). The Respondent mitigated the violation by submitting a complete report to the DEM on 20 September 2013, but only after DEM requested that the Respondent do so, and after the pumps had been reinstalled and were operational.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the violation. The Respondent was well aware of its obligation to report to the DEM that the stormwater treatment system was inoperable; however, it failed to do so. In fact, had DEM not responded to the fire at the facility on 18 August 2013 and asked about whether the firefighting water could be collected and pumped to the system did the Respondent advise DEM that the pumps were removed from service.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000 \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250